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Attorneys for Defendant
 BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC,
 erroneously sued as BRIDGESTONE AMERICAS, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SONY COMPUTER ENTERTAINMENT
 AMERICA LLC, a Delaware limited liability
 company,

 Plaintiff,

 vs.

 BRIDGESTONE AMERICAS, INC.; a
 Nevada corporation; WILDCAT CREEK,
 INC., a California corporation; and DOES 1
 through 10,

 Defendants.

Case No. 3:12-cv-04753-CRB
ANSWER OF BRIDGESTONE
AMERICAS TIRE OPERATIONS,
LLC, ERRONEOUSLY SUED AS
BRIDGESTONE AMERICAS, INC.

DEMAND FOR JURY TRIAL

 District Judge Charles R. Breyer
 Courtroom 8

E-FILING

Defendant BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC, erroneously
 sued as BRIDGESTONE AMERICAS, INC. (“Bridgestone”) answers the “Complaint for
 Injunctive Relief and Damages Based on Violations of the Lanham Act (15 U.S.C.
 § 1125(a)); Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); Common Law

Unfair Competition; Common Law Misappropriation; Breach of Contract; and Tortious Interference with Contractual Relations” (Dkt. Entry No. 1) (the “Complaint”) of Plaintiff SONY COMPUTER ENTERTAINMENT AMERICA LLC (“Plaintiff”), and admits, denies and avers, as follows.

FIRST DEFENSE

(Response to Allegations in Complaint)

NATURE OF THE ACTION

1. Bridgestone admits that Plaintiff claims that an actor has portrayed an alleged fictional character, Kevin Butler (“Kevin Butler”), to promote Plaintiff’s PlayStation video game systems and related products. Except as expressly admitted, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and, therefore, denies them.

2. Bridgestone admits that the same actor appears to have portrayed “Kevin Butler” in certain of Plaintiff’s promotional materials, including commercials. Except as expressly admitted, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and, therefore, denies them.

3. Bridgestone admits that, between approximately September 3, 2012 and September 23, 2012, a commercial aired in connection with its “Game On!” tire promotion; pursuant to the promotion, a customer could receive a \$70 reward card or a Nintendo Wii system upon the purchase of four select Bridgestone tires. One of the actors who appeared in the commercial as a Bridgestone engineer is Jerry Lambert, who Bridgestone is now informed and believes has portrayed the “Kevin Butler” referred to in paragraphs 1 and 2, above. Bridgestone expressly denies that Plaintiff has any protectable property interest whatsoever in any “Kevin Butler” character; that Bridgestone has violated the Lanham Act; that Bridgestone engaged in unfair competition; that Bridgestone misappropriated Plaintiff’s property; or that Bridgestone tortiously interfered with any contractual relations. Except as expressly admitted or otherwise stated, Bridgestone denies the allegations against Bridgestone in paragraph 3 of the Complaint.

4. Bridgestone denies the allegations in paragraph 4.

PARTIES

5. Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and, therefore, denies them.

6. Bridgestone admits that Bridgestone Americas, Inc., is incorporated in the state of Nevada. Except as expressly admitted, Bridgestone denies the allegations in paragraph 6 of the Complaint

7. Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 7 of the Complaint and, therefore, denies them.

8. Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8 of the Complaint and, therefore, denies them.

JURISDICTION AND VENUE

9. Bridgestone admits that Plaintiff purports to assert a claim arising under the Lanham Act (15 U.S.C. § 1125(a)), and therefore this Court has jurisdiction over the subject matter of this action, but only to the extent Plaintiff alleged proper claims for relief. Except as expressly admitted, Bridgestone denies the allegations in paragraph 9 of the Complaint.

10. Bridgestone admits that personal jurisdiction over Bridgestone is proper, but only to the extent Plaintiff alleged proper claims for relief. Except as expressly admitted, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 10 of the Complaint and, therefore, denies them.

11. Bridgestone admits that venue is proper in this judicial district, but only to the extent Plaintiff alleged proper claims for relief. Except as expressly admitted, Bridgestone denies the allegations against Bridgestone in paragraph 11 of the Complaint.

INTRADISTRICT ASSIGNMENT

12. Bridgestone admits that assignment of an Intellectual Property Action on a district-wide basis is proper under Local Rule 3-2(c). Except as expressly admitted, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the

1 allegations in paragraph 12 of the Complaint and, therefore, denies them.

2 GENERAL ALLEGATIONS

3 SCEA and the PlayStation 3 System

4 13. Bridgestone admits that Plaintiff claims to be known for its sales of home
5 entertainment products and claims to be highly regarded in the video game industry.

6 Bridgestone admits that Plaintiff contends that it sells the PlayStation 3 System (“PS3”),
7 which Bridgestone is informed and believes is a computer entertainment system featuring
8 hardware and firmware designed for the playing of video games, Blu-ray discs and DVD
9 movies. Except as expressly admitted, Bridgestone lacks sufficient knowledge or
10 information to form a belief as to the truth of the allegations in paragraph 13 of the
11 Complaint and, therefore, denies them.

12 14. Bridgestone admits that Plaintiff contends that it develops and publishes
13 video game software for the PS3. Except as expressly admitted, Bridgestone lacks
14 sufficient knowledge or information to form a belief as to the truth of the allegations in
15 paragraph 14 of the Complaint and, therefore, denies them.

16 15. Bridgestone admits that Plaintiff contends that the PS3 has enjoyed wide
17 success throughout the United States and the world and that Plaintiff alleges to have sold
18 numerous PS3s. Except as expressly admitted, Bridgestone lacks sufficient knowledge or
19 information to form a belief as to the truth of the allegations in paragraph 15 of the
20 Complaint and, therefore, denies them.

21 The Subject Agreement

22 16. Bridgestone admits that, to the extent such an agreement exists, the
23 agreement speaks for itself; but to any extent the allegations in paragraph 16 are
24 inconsistent with or vary from the express or implied terms of the alleged agreement,
25 Bridgestone denies such allegations. Except as expressly admitted, Bridgestone lacks
26 sufficient knowledge or information to form a belief as to the truth of the allegations in
27 paragraph 16 of the Complaint and, therefore, denies them.

28 17. Bridgestone admits that, to the extent such an agreement exists, the agreement

(including any so-called “exclusivity clause” therein) speaks for itself; but to any extent the allegations in paragraph 17 are inconsistent with or vary from the express or implied terms of the alleged agreement, Bridgestone denies such allegations. Except as expressly admitted, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17 of the Complaint and, therefore, denies them.

18. Bridgestone admits that, to the extent such an agreement exists, the agreement speaks for itself; but to any extent the allegations in paragraph 18 are inconsistent with or vary from the express or implied terms of the alleged agreement, Bridgestone denies such allegations. Except as expressly admitted, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and, therefore, denies them.

19. Bridgestone admits that, to the extent such an agreement exists, the agreement speaks for itself; but to any extent the allegations in paragraph 19 are inconsistent with or vary from the express or implied terms of the alleged agreement, Bridgestone denies such allegations. Except as expressly admitted, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and, therefore, denies them.

The “Kevin Butler” Character

[PLAINTIFF DID NOT NUMBER THE FIRST PARAGRAPH UNDER THIS HEADING] Bridgestone admits that it appears the same actor has portrayed “Kevin Butler” in certain of Plaintiff’s promotional materials. The promotional materials speak for themselves, and to the extent the allegations in this unnumbered paragraph are inconsistent with or vary from the promotional materials themselves, Bridgestone denies such allegations. Except as expressly stated, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this unnumbered paragraph of the Complaint and, therefore, denies them.

20. Bridgestone admits that it appears the same actor has portrayed “Kevin Butler” in certain of Plaintiff’s promotional materials. The promotional materials speak for

1 themselves and to the extent the allegations in paragraph 20 are inconsistent with or vary
2 from the promotional materials themselves, Bridgestone denies such allegations. Except as
3 expressly stated, Bridgestone lacks sufficient knowledge or information to form a belief as
4 to the truth of the allegations in paragraph 20 of the Complaint and, therefore, denies them.

5 21. Bridgestone lacks sufficient knowledge or information to form a belief as to
6 the truth of the allegations in paragraph 21 of the Complaint and, therefore, denies them.

7 Defendants' Unlawful Conduct

8 22. Bridgestone admits that, between approximately September 3, 2012 and
9 September 23, 2012, a commercial aired in connection with its "Game On!" tire promotion;
10 pursuant to the promotion, a customer could receive a \$70 reward card or a Nintendo Wii
11 system upon the purchase of four select Bridgestone tires. Mr. Lambert is one of the actors
12 who appeared in the commercial as a Bridgestone engineer. Bridgestone denies that "Kevin
13 Butler" appears in the Bridgestone commercial discussed herein and thus denies that he
14 speaks or does anything whatsoever in the commercial. Except as expressly admitted or
15 otherwise stated, Bridgestone denies the allegations in paragraph 22 of the Complaint.

16 23. Bridgestone denies the allegations in paragraph 23 of the Complaint.

17 24. Bridgestone admits that Mr. Lambert has appeared as a Bridgestone engineer
18 in various Bridgestone commercials since approximately February 2012. Except as
19 expressly admitted, Bridgestone denies the allegations in paragraph 24 of the Complaint.

20 25. Bridgestone admits that it eventually became aware of the existence of an
21 agreement involving Plaintiff and Mr. Lambert. Except as expressly admitted, Bridgestone
22 denies the allegations in paragraph 25 of the Complaint.

23 26. Bridgestone denies the allegations in paragraph 26 of the Complaint.

24 27. Bridgestone lacks sufficient knowledge or information to form a belief as to
25 the truth of the allegations in paragraph 27 of the Complaint and, therefore, denies them.

26 28. Bridgestone denies that "Kevin Butler" appears in any Bridgestone
27 commercial, and thus denies that he does anything whatsoever in any such commercial.

28 Furthermore, Bridgestone lacks sufficient knowledge or information to form a belief as to

1 the truth of the allegations in paragraph 28 of the Complaint and, therefore, denies them.

2 29. Bridgestone denies the allegations against Bridgestone in paragraph 29 of
3 the Complaint.

4 FIRST CLAIM FOR RELIEF

5 (Violation of the Lanham Act, 15 U.S.C. § 1125(a), *et seq.*)

6 (Against Bridgestone)

7 30. Bridgestone incorporates by reference paragraphs 1-29 above as if fully set
8 forth herein.

9 31. Bridgestone lacks sufficient knowledge or information to form a belief as to
10 the truth of the allegations in paragraph 31 of the Complaint and, therefore, denies them.

11 32. Bridgestone lacks sufficient knowledge or information to form a belief as to
12 the truth of the allegations in paragraph 32 of the Complaint and, therefore, denies them.

13 33. Bridgestone denies the allegations in paragraph 33 of the Complaint.

14 34. Bridgestone denies the allegations in paragraph 34 of the Complaint.

15 35. Bridgestone lacks sufficient knowledge or information to form a belief as to
16 the truth of the allegations in paragraph 35 of the Complaint and, therefore, denies them.

17 36. Bridgestone denies the allegations in paragraph 36 of the Complaint.

18 37. Bridgestone denies the allegations in paragraph 37 of the Complaint.

19 SECOND CLAIM FOR RELIEF

20 (Unfair Competition, Cal. Bus. & Prof. Code § 17200, *et seq.*)

21 (Against Bridgestone)

22 38. Bridgestone incorporates by reference its responses to the allegations
23 contained in paragraphs 1-37 of the Complaint as though fully set forth herein.

24 39. Bridgestone denies the allegations in paragraph 39 of the Complaint.

25 40. Bridgestone denies the allegations in paragraph 40 of the Complaint.

26 41. Bridgestone denies the allegations in paragraph 41 of the Complaint.

27 42. Bridgestone denies the allegations in paragraph 42 of the Complaint.

1 THIRD CLAIM FOR RELIEF

2 (Common Law Unfair Competition)

3 (Against Bridgestone)

4 43. Bridgestone incorporates by reference its responses to the allegations
5 contained in paragraphs 1-42 of the Complaint as though fully set forth herein.

6 44. Bridgestone denies the allegations in paragraph 44 of the Complaint.

7 45. Bridgestone denies the allegations in paragraph 45 of the Complaint.

8 46. Bridgestone denies the allegations in paragraph 46 of the Complaint.

9 47. Bridgestone denies the allegations in paragraph 47 of the Complaint.

10 FOURTH CLAIM FOR RELIEF

11 (Common Law Misappropriation)

12 (Against Bridgestone)

13 48. Bridgestone incorporates by reference its responses to the allegations
14 contained in paragraphs 1-47 of the Complaint as though fully set forth herein.

15 49. Bridgestone lacks sufficient knowledge or information to form a belief as to
16 the truth of the allegations in paragraph 49 of the Complaint and, therefore, denies them.

17 50. Bridgestone denies the allegations in paragraph 50 of the Complaint.

18 51. Bridgestone denies the allegations in paragraph 51 of the Complaint.

19 52. Bridgestone denies the allegations in paragraph 52 of the Complaint.

20 53. Bridgestone denies the allegations in paragraph 53 of the Complaint.

21 FIFTH CLAIM FOR RELIEF

22 (Breach of Contract)

23 (Against Wildcat Creek)

24 54. Bridgestone incorporates by reference its responses to the allegations
25 contained in paragraphs 1-53 of the Complaint as though fully set forth herein.

26 55. The fifth claim for relief is not brought against Bridgestone and, therefore,
27 Bridgestone is not required to admit or deny the allegations in paragraph 55 of the
28 Complaint. To the extent the fifth claim for relief purports to be against Bridgestone,

1 Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the
2 allegations in paragraph 55 of the Complaint and, therefore, denies them.

3 56. The fifth claim for relief is not brought against Bridgestone and, therefore,
4 Bridgestone is not required to admit or deny the allegations in paragraph 56 of the
5 Complaint. To the extent the fifth claim for relief purports to be against Bridgestone,
6 Bridgestone lacks sufficient knowledge or information to form a belief as to the truth of the
7 allegations in paragraph 56 of the Complaint and, therefore, denies them.

8 57. The fifth claim for relief is not brought against Bridgestone and, therefore,
9 Bridgestone is not required to admit or deny the allegations in paragraph 57 of the
10 Complaint. To the extent the fifth claim for relief purports to be against Bridgestone, and
11 except as otherwise stated, Bridgestone lacks sufficient knowledge or information to form a
12 belief as to the truth of the allegations in paragraph 57 of the Complaint and, therefore,
13 denies them.

14 58. The fifth claim for relief is not brought against Bridgestone and, therefore,
15 Bridgestone is not required to admit or deny the allegations in paragraph 58 of the
16 Complaint. To the extent the fifth claim for relief purports to be against Bridgestone, and
17 except as otherwise stated, Bridgestone lacks sufficient knowledge or information to form a
18 belief as to the truth of the allegations in paragraph 58 of the Complaint and, therefore, denies
19 them.

20 59. The fifth claim for relief is not brought against Bridgestone and, therefore,
21 Bridgestone is not required to admit or deny the allegations in paragraph 59 of the Complaint.
22 To the extent the fifth claim for relief purports to be against Bridgestone, and except as
23 otherwise stated, Bridgestone lacks sufficient knowledge or information to form a belief as to
24 the truth of the allegations in paragraph 59 of the Complaint and, therefore, denies them.

25 60. The fifth claim for relief is not brought against Bridgestone and, therefore,
26 Bridgestone is not required to admit or deny the allegations in paragraph 60 of the Complaint.
27 Paragraph 60 contains legal conclusions that Bridgestone is not required to admit or deny. To
28 the extent the fifth claim for relief purports to be against Bridgestone, and except as otherwise

1 stated, Bridgestone lacks sufficient knowledge or information to form a belief as to the truth
2 of the allegations in paragraph 60 of the Complaint and, therefore, denies them.

3 61. The fifth claim for relief is not brought against Bridgestone and, therefore,
4 Bridgestone is not required to admit or deny the allegations in paragraph 61 of the Complaint.
5 To the extent the fifth claim for relief purports to be against Bridgestone, and except as
6 otherwise stated, Bridgestone lacks sufficient knowledge or information to form a belief as to
7 the truth of the allegations in paragraph 61 of the Complaint and, therefore, denies them.

8 SIXTH CLAIM FOR RELIEF

9 (Tortious Interference with Contractual Relations)

10 (Against Bridgestone)

11 62. Bridgestone incorporates by reference its responses to the allegations
12 contained in paragraphs 1-61 of the Complaint as though fully set forth herein.

13 63. Bridgestone lacks sufficient knowledge or information to form a belief as to
14 the truth of the allegations in paragraph 63 of the Complaint and, therefore, denies them.

15 64. Bridgestone denies the allegations in paragraph 64 of the Complaint.

16 65. Bridgestone denies the allegations in paragraph 65 of the Complaint.

17 66. Bridgestone denies the allegations in paragraph 66 of the Complaint.

18 67. Bridgestone denies the allegations in paragraph 67 of the Complaint.

19 68. Bridgestone denies the allegations in paragraph 68 of the Complaint.

20 REQUESTED RELIEF

21 Bridgestone denies that Plaintiff is entitled to any of its requested relief or any other
22 relief whatsoever.

23 SECOND DEFENSE

24 **(Failure to State a Claim)**

25 Plaintiff has failed to state a claim upon which relief can be granted.

26 THIRD DEFENSE

27 **(Laches)**

28 Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of laches.

1 **FOURTH DEFENSE**

2 **(Estoppel)**

3 Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of
4 estoppel.

5 **FIFTH DEFENSE**

6 **(Acquiescence)**

7 Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of
8 acquiescence.

9 **SIXTH DEFENSE**

10 **(Lack of Secondary Meaning)**

11 Each of Plaintiff's claims fail because Plaintiff's alleged unregistered mark has not
12 acquired secondary meaning.

13 **SEVENTH DEFENSE**

14 **(No Confusion, Mistake or Deception)**

15 Each of Plaintiff's claims against Bridgestone fail because there is no likelihood of
16 consumer confusion as a result of defendants' alleged conduct.

17 **EIGHTH DEFENSE**

18 **(Unclean Hands)**

19 Each of Plaintiff's claims is barred by the doctrine of unclean hands.

20 **NINTH DEFENSE**

21 **(Fair Use)**

22 Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of fair use.

23 **TENTH DEFENSE**

24 **(No Injury Under Lanham Act)**

25 Plaintiff has not been, nor is likely to be, injured as defined under 15 U.S.C.
26 section 1125(a)(1)(B), because it cannot show that there has been or will be any diversion
27 of sales or any reduction in the goodwill associated with Plaintiff's PS3 product as a result
28 of any conduct alleged in the Complaint.

ELEVENTH DEFENSE

(No Mitigation of Damages)

Plaintiff's claims for relief are barred, in whole or in part, by Plaintiff's failure to mitigate damages.

TWELFTH DEFENSE

(No Violation of Underlying Statute)

Plaintiff's claims for unlawful business practices under California Business and Professions Code sections 17200, *et seq.* are barred by the fact that there has been no violation of an underlying statute or regulation or conduct that is otherwise wrongful.

THIRTEENTH DEFENSE

(No Unfair Practices)

Defendants' allegedly wrongful conduct was not unfair under California Business and Professions Code sections 17200, *et seq.*

FOURTEENTH DEFENSE

(No Injury Under Section 17200)

Plaintiff has suffered no injury, as defined under California Business and Professions Code sections 17200, *et seq.* as a result of Bridgestone's alleged acts or omissions.

FIFTEENTH DEFENSE

(Lack of Causation)

The Complaint is barred because any loss, injury, damage or detriment as alleged in the Complaint resulted from the acts or omissions of Plaintiff and/or a third party and was not due to any act or omission of defendants.

SIXTEENTH DEFENSE

(Justification / Privilege)

With respect to one or more of the purported claims, any of the acts alleged to have been performed by defendants, if performed at all, were justified, privileged, proper, legal, fair and not done in degradation of the rights or legal interests of Plaintiff.

1 **SEVENTEENTH DEFENSE**

2 **(Good Faith)**

3 Plaintiff's purported claims are barred, in whole or in part, because at all times
4 relevant to this action, defendants acted in good faith and with a reasonable belief that its
5 actions were lawful.

6 **EIGHTEENTH DEFENSE**

7 **(Acts Outside Scope of Agent's Authority)**

8 Any allegedly wrongful acts performed by the agents of Bridgestone, if there were
9 any, were made outside the course and scope of such agents' authority. Accordingly,
10 Plaintiff is barred from asserting any claim or relief against Bridgestone based on said
11 allegedly wrongful acts.

12 **NINETEENTH DEFENSE**

13 **(Absence of Necessary Parties)**

14 The purported claims require, for their complete adjudication, the joining of additional,
15 necessary or indispensable parties, without whom the purported claims cannot be fully, finally
16 and completely resolved.

17 **TWENTIETH DEFENSE**

18 **(Attorneys' Fees Improper)**

19 Plaintiff is precluded from recovering attorneys' fees from Bridgestone under
20 applicable provisions of law.

21 **TWENTY-FIRST DEFENSE**

22 **(No Profits or Ill-Gotten Gains)**

23 Damages in the form of profits is an improper remedy here to the extent Bridgestone
24 has received no profits or other inappropriate gains as a direct result of the alleged conduct
25 at issue.

26 **TWENTY-SECOND DEFENSE**

27 **(No Injunctive Relief)**

28 Plaintiff is not entitled to injunctive relief because Bridgestone is not engaged in the

1 allegedly wrongful conduct alleged in the Complaint.

2 **TWENTY-THIRD DEFENSE**

3 **(Reservation of Additional Defenses)**

4 Bridgestone presently has insufficient knowledge and information on which to form
5 a belief as to whether there exists additional, as yet unstated, affirmative defenses.

6 Bridgestone reserves the right to assert additional affirmative defenses in the event that
7 discovery indicates that such defenses would be appropriate.

8 Dated: October 4, 2012.

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14 By /s/ Colin T. Kemp
Colin T. Kemp
15 Attorneys for Defendant
BRIDGESTONE AMERICAS TIRE
16 OPERATIONS, LLC, erroneously sued as
BRIDGESTONE AMERICAS, INC.
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CERTIFICATE OF SERVICE

I, Colin T. Kemp, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City and County of San Francisco, California.

2. My business address is 50 Fremont Street, San Francisco, CA 94105.

3. On October 4, 2012, I filed the foregoing documents titled ANSWER OF BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC, ERRONEOUSLY SUED AS BRIDGESTONE AMERICAS, INC.; DEMAND FOR JURY TRIAL electronically with the United States District Court, Northern District of California, and because of that the below-listed party should have been served via the Court's electronic case filing system at the email addresses listed below:

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Attorneys for Plaintiff SONY COMPUTER ENTERTAINMENT AMERICA LLC

I declare under penalty of perjury of the laws of the United States of America that the foregoing declaration is true and correct.

Executed October 4, 2012, at San Francisco, California.

//s// Colin T. Kemp